

American Nuclear Resources, Inc. and International Brotherhood of Electrical Workers, Local 153, AFL-CIO, Petitioner. Case 7-RC-19104

October 29, 1990

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

The National Labor Relations Board, by a three-member panel, has considered objections to an election held November 10, 1989, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 16 for and 22 against the Petitioner, with 1 challenged ballot.

The Board has reviewed the record in light of the exceptions,¹ brief, and memorandum and has decided to affirm the hearing officer's findings² and recommendations only to the extent consistent with this decision and certification of results of election.

The Employer is a subcontractor at the D.C. Cook Nuclear Power Plant which is owned and operated by the Indiana & Michigan Power Company. The Indiana & Michigan Power Company refused to allow the election to be held in the plant, which is the worksite of the voting unit. The parties agreed to hold the election at the training center, located about one-half mile from the plant.

The Employer made a "release list" of employees and gave the list to the employees and their supervisors. At their release time, the employees left their jobs and walked through the plant lobby to a van to be driven to the polls. Supervisor Haines was standing inside the lobby with his copy of the release list. As the employees entered the van, Haines made a mark beside their names.

As the employees entered the lobby of the training center,³ Supervisor Hess made a mark beside the employees' names, and then directed them down the hall-

way to the polling place. Hess could not see the employees after they entered the hallway.

The Petitioner's objection alleges that Supervisors Haines and Hess engaged in surveillance of the employees. The hearing officer found that Haines and Hess engaged in listkeeping and recommended sustaining the objection based on several factors: (1) the openness of the listkeeping, i.e., the supervisors checked off the employees' names in plain sight of all the employees; (2) the Employer usually had an employee sign-in log at the center, not a supervisor with a checklist; and (3) the listkeeping started before the polls opened and continued throughout the polling period.

The Employer, which is involved in the on-site operation of an atomic powerplant, contends that it had a legitimate reason for the listkeeping, i.e., to maintain a secure workplace. The Employer argues that its employees are accustomed to being monitored and that the listkeeping would not reasonably tend to intimidate the employees. We agree.

The employees are accustomed to having their movements monitored. When employees leave the plant they must sign a timesheet and their supervisor must also fill out a separate sign-out sheet. The employees wear radiation badges during their shift and return them at the end of the shift. They sign a log when they go to the center for training. The Employer is required by its general contractor to know where its employees are. Checklists can be a legitimate method of keeping track of employees. We find it was reasonable for the Employer to choose to use checklists during the election instead of a sign-in sheet, which would have been unduly cumbersome given that the employees arrived at the training center in groups of 9 to 13 persons, at 10-minute intervals.

The cases relied on by the hearing officer concern establishments that did not necessarily require, nor was it shown that they maintained, a high degree of security. Nor were their employees shown to have been accustomed to having their movements monitored. Here it is not self-evident that these employees would have tended to be intimidated and there is no evidence that any employee was coerced by the listkeeping. The employees knew that the Employer routinely monitored their movements, and that listkeeping is a normal security procedure. In the circumstances of this nuclear facility and its practices, we find that the listkeeping did not reasonably tend to coerce the employees and therefore it was not objectionable conduct.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for International Brotherhood of Electrical Workers, Local 153, AFL-CIO, and that it

¹ In the absence of exceptions, we adopt, pro forma, the hearing officer's recommendations to overrule the Petitioner's objections which alleged that (1) the Employer's labor relations consultant created an impression that he was a Board agent, (2) Supervisor Hess directed employees to the polling area and advised employees that they could go home, and (3) the Employer paid the employees to vote.

² The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

³ The lobby has a foyer with two sets of glass doors. The polls area was down a long hallway, to the right of the foyer. Once inside the center, the employees could go to the polling area, go upstairs to the cafeteria, or leave the building. During the 45-minute polling period, three union representatives and Labor Relations Consultant Hunter were present in the lobby, along with Supervisor Hess.

is not the exclusive representative of these bargaining unit employees.

CHAIRMAN STEPHENS, dissenting.

Contrary to my colleagues, I would adopt the hearing officer's recommendation that the election be set aside on the basis of the Employer's listkeeping in plain view of all employees arriving to vote. As explained below, I rely on the activities of Supervisor Hess and do not reach the question whether there would be a sustainable objection had the list-checking been limited to monitoring who boarded the van at the nuclear facility.

As the hearing officer notes, it has long been Board policy to prohibit agents of parties from standing at or near the polls during a Board election and checking off names of the employees voting in that election. *Piggly-Wiggly*, 168 NLRB 792 (1967); *Belk's Department Store*, 98 NLRB 280 (1952); *International Stamping Co.*, 97 NLRB 921, 922-923 (1951). Furthermore, as the hearing officer correctly concluded, this case does not fit into exceptions for listkeeping that is either de minimis because it could not have been observed by most voters or that is linked to some more limited, legitimate objective—as when an observer keeps track of those voters whom he or she intends to challenge. Here Supervisor Hess stood prominently in the lobby at the training center, placing marks by employees' names as they came through—directing employees toward the hallway leading to the polling area, while telling one, who may have been ineligible to vote and who inquired as to what he should do, that he could go home.

Neither is it significant that Hess was not standing at the actual polls. Although Hess could not see employees as they entered the polling place, he was in a position to see whether they turned down the hallway

leading there. The case is therefore not distinguishable on this ground from *Piggly-Wiggly*, supra, in which the Board sustained an objection based on the conduct of union agents who stood with employee lists in front of stores in which polling places were situated.

My colleagues in fact tacitly concede that this case would normally fall within the Board's listkeeping prohibition. They create and rely on an exception to that prohibition for nuclear facilities that have a safety-related practice of closely surveilling employees' activities. I would not recognize such an exception on this record. The election was not conducted in the nuclear plant, and the interest of the power company in keeping track of who remained in that building was served by a check of who boarded the van in which a security guard would transport the employees to the training center, more than one-half mile away. Neither am I persuaded that the custom of closely monitoring these employees during their workdays justifies the result here. As the hearing officer found, Supervisor Hess' list-checking was actually contrary to the standard practice in the training center, where employees usually just signed a logbook to indicate their presence in that building. The Employer simply has not shown why it needed to change its practices in the center on that day so as to put the monitoring process in the hands of one of its supervisors.¹

In sum, I would find that Board precedent concerning listkeeping by parties near the polls dictates adoption of the hearing officer's recommendation that the election be set aside.

¹ It should not reasonably take more than a few seconds to sign one's name in a logbook. Hence, I do not agree with my colleagues that such a procedure would be "cumbersome" whenever 9 to 13 employees arrive at the training center together. In my view, the slight difference in elapsed time between unmonitored logbook-signing and the supervisor's list-checking does not warrant making an exception to the Board's general rule on election day listkeeping by parties.